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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/753,926	01/03/2001	Rodney J. Simpson	BFC 2-001-3-2	2651

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EXAMINER

MADSEN, ROBERT A

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 05/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/753,926

Applicant(s)

SIMPSON ET AL.

Examiner

Robert Madsen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The Amendment filed June 6, 2003 has been entered. Claims 1-46 remain pending in the application.
2. The objection to claim 44 under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim is hereby withdrawn in light of the amendment.
3. The rejection of claim 46 under 35 U.S.C. 112, second paragraph, is hereby withdrawn in light of the amendment.
4. The obviousness-type double patenting rejections made in the Office Action mailed March 13, 2003 stand for the reasons of record.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
6. Claims 1, 2, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson (US 5011066) in view of Fritz (US 5423453) for the reasons stated in the Office Action mailed March 13, 2003.
7. Claims 3, 4, 6, 8, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson (US 5011066) in view of Fritz (US 5423453), as applied

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to 1,2, and 5 above, further in view of Gics (US 5900263) for the reasons stated in the Office Action mailed March 13,2003.

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson (US 5011066) in view of Fritz (US 5423453) and Gics (US 5900263), as applied to claims 3, 4, 6,8, and 9 above, further in view of Davis (US 5540381) for the reasons stated in the Office Action mailed March 13,2003.

9. Claims 10,12,15,18,20,23,24,28,30-33,35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson (US 5011066) in view of Fritz (US 5423453) and Gics (US 5900263) for the reasons stated in the Office Action mailed March 13,2003.

10. Claims 13,14,16,21, 22,37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson (US 5011066) in view of Fritz (US 5423453) and Gics (US 5900263), as applied to claims 10,12,15,18,20,23,24,28,30-33,35 above, further in view of Davis (US 5540381) for the reasons stated in the Office Action mailed March 13,2003.

11. Claims 17 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson (US 5011066) in view of Fritz (US 5423453) ,Gics (US 5900263), and Davis (US 5540381) as applied to claims 13,14,16,21, 22,37 above, further in view of

Jackson (US 6105774) for the reasons stated in the Office Action mailed March 13,2003.

12. Claims 11,19, 24, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson (US 5011066) in view of Fritz (US 5423453) and Gics (US 5900263), as applied to claims 10,12,15,18,20,23,24,28,30-33,35 above, further in view of Bunce et al. (US 4924048) for the reasons stated in the Office Action mailed March 13,2003.

13. Claims 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson (US 5011066) in view of Fritz (US 5423453) , Gics (US 5900263), and Bunce et al. (US 4924048) as applied to claims 11,19,24, and 29 above, further in view of Davis (US 5540381) for the reasons stated in the Office Action mailed March 13,2003.

14. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson (US 5011066) in view of Fritz (US 5423453) and Gics (US 5900263), as applied to claims 10,12,15,18,20,23,24,28,30-33,35 above, further in view of Jackson (US 6105774) for the reasons stated in the Office Action mailed March 13,2003.

15. Claims 38,40, 43, 44and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson (US 5011066) in view of Fritz (US 5423453) and Gics (US 5900263).

16. Regarding claims 38,40,43, see the reasons stated in the Office Action mailed March 13,2003.

17. Regarding amended claim 44, claim 44 recites the same limitations as claim 43, but depends from claim 40. Therefore, claim 44 is rejected for the same reasons stated for claim 43 in the Office Action mailed March 13,2003.

18. Regarding amended claim 46, the currently recited limitation (d) was already addressed in the Office Action mailed March 13,2003.

19. Claims 41 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson (US 5011066) in view of Fritz (US 5423453) and Gics (US 5900263), as applied to claims 38,40, 43,46 above, further in view of Davis (US 5540381) in the Office Action mailed March 13,2003.

20. Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson (US 5011066) in view of Fritz (US 5423453) and Gics (US 5900263), as applied to claims 38,40,43,46 above, further in view of Jackson (US 6105774) in the Office Action mailed March 13,2003.

Response to Arguments

21. Applicant's arguments filed June 6, 2003 have been fully considered but they are not persuasive.

22. Regarding Claims 1, 2, and 5 rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson (US 5011066) in view of Fritz (US 5423453), or specifically independent claim 1, applicant argues that neither Anderson nor Fritz recognize the problem that applicant has disclosed, the stability of upright standing food trays, or even suggest applicant's solution to the problem: a raised button extending into the cavity of the food tray. However, as stated in the Office Action mailed March 13, 2003, Anderson teaches the conventional stand-up food tray for microwave cooking. Anderson only differs in the inclusion of a raised button extending into the cavity of the food tray. Fritz teaches it is notoriously well known to provide a raised button extending into the cavity for controlling weight distribution in the tray and heat distribution during microwave cooking. Thus, Fritz provides motivation for including a raised button in Anderson's tray: weight distribution in the tray and heat distribution during microwave cooking, albeit for a different purpose than applicant, and the resulting modified tray shares the same structural limitations as recited in the claims. Applicant is reminded that the reason or motivation to modify the reference may often suggest what the inventor has done, but for a different purpose or to solve a different problem. It is not necessary that the prior art suggest the combination to achieve the same advantage or result discovered by applicant (See *In re Linter*, 458 F.2d 1013, 173 USPQ 560 (CCPA 1972) and *In re Dillon*, 919 F.2d 688, 16 USPQ2d 1897 (Fed. Cir. 1990), cert. denied,

500 U.S. 904 (1991)). Further, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

23. Regarding claims 10,12,15,18,20,23,24,28,30-33,35 rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson (US 5011066) in view of Fritz (US 5423453) and Gics (US 5900263), or specifically independent claims 10, 18, and 28, applicant argues that none of the references recognize the problem that applicant has disclosed, the stability of upright standing food trays, or even suggest applicant's solution to the problem: a raised button extending into the cavity of the food tray. Claims 10,18 and 28 merely adds another conventional food tray feature: a sleeves that surrounds the tray, and Gics teaches an improvement of the sleeve design for stand up trays like the sleeve/tray design Anderson would include a sleeve surrounding the tray. As discussed in the preceding paragraph, Fritz once again provides motivation for including a raised button in Anderson's tray: weight distribution in the tray and heat distribution during microwave cooking, albeit for a different purpose than applicant, and the resulting modified tray shares the same structural limitations as recited in the claims. Applicant is reminded that the reason or motivation to modify the reference may often suggest what the inventor has done, but for a different purpose or to solve a different problem. It is not necessary that the prior art suggest the combination to achieve the same advantage or result discovered by applicant (See *In re Linter*, 458 F.2d 1013, 173 USPQ 560 (CCPA 1972) and *In re Dillon*, 919 F.2d 688, 16 USPQ2d 1897 (Fed.

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Cir. 1990), cert. denied, 500 U.S. 904 (1991)). Further, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

24. Regarding claims 38, 40, 43, and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson (US 5011066) in view of Fritz (US 5423453) and Gics (US 5900263), or specifically independent claim 38, applicant argues that none of the references recognize the problem that applicant has disclosed, the stability of upright standing food trays, or even suggest applicant's solution to the problem: a raised button extending into the cavity of the food tray. Claim 38 is a method for making a microwavable food packing system that is stable in the upright position, with the same physical features as discussed in claim 18 above, comprising the steps of "providing" the tray of claim 18, "placing" the food pouch of claim 18 therein, and "providing" the sleeve of claim 18. For the reason set forth in the above paragraph, applicant is reminded that the reason or motivation to modify the reference may often suggest what the inventor has done, but for a different purpose or to solve a different problem. It is not necessary that the prior art suggest the combination to achieve the same advantage or result discovered by applicant (See *In re Linter*, 458 F.2d 1013, 173 USPQ 560 (CCPA 1972) and *In re Dillon*, 919 F.2d 688, 16 USPQ2d 1897 (Fed. Cir. 1990), cert. denied, 500 U.S. 904 (1991)). Further, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art

cannot be the basis for patentability when the differences would otherwise be obvious.

See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Conclusion

25. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

26. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

27. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 7:00AM-3:30PM M-F.

28. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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29. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert Madsen
Examiner
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